PL. AR. LETCHUMANAN CHETTIAR

v.

AR. PL. PALANIAPPA CHETTIAR

PRIVY COUNCIL
LORD HAILSHAM OF ST. MARYLEBONE LC
LORD SCARMAN
LORD ROSKILL
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN
[APPEAL NO. 32 OF 1981]
15 NOVEMBER 1982

LAND LAW: *Caveat - Removal of - Consent order for sale of land - Whether respondent subject to implied obligation to withdraw caveat.*

The appellant and respondent were step-brothers. Their father was the manager of a joint family estate which included land at Port Dickson registered in the name of the manager and held under Hindu law in trust for the manager, the appellant and the respondent in equal shares. On 2 April 1951, the respondent brought a civil suit claiming an account of the amount due to the respondent from the joint family estate or from the manager. The respondent also lodged a caveat against the said lands which caveat was subsequently withdrawn except for Lot 538.

In 1964, a receiver of the joint family estate was appointed. In 1972 the manager died and a year later, the probate of the will of the manager was granted to the appellant subject to the proviso that disposition of the property should be preceded by an order of the Court. In 1974, the Privy Council ordered that the accounts of the joint family estate should be supplied from 15 July 1950. It was alleged by the respondent that there had been maladministration and breach of trust by both the manager and the appellant in connection with the family estate.

In 1978, the appellant applied for leave to sell Lot 538. In his affidavit he explained that in the manager's lifetime and the appellant after his death were force to borrow money at high rates of interest. The appellant wished to discharge the debts out of the two-thirds share of the proceeds of sale of Lot 538 and to invest the balance. In 1979 an order was made with the consent of the parties for leave to sell the said Lot 538 for a minimum price which proceeds were to be divided as to two-thirds to the appellant and one-third to the respondent. But when the respondent was asked to withdraw the caveat, he declined to do so unless the manager's share of the proceeds was placed on deposit as security for the claims of the respondent against the manager's estate. Thereafter, the appellant applied for an order that the caveat be removed and cancelled which application was allowed by the High Court. This order was overturned on appeal to the Federal Court. The appellant then appealed to the Privy Council.

The issue was whether the respondent, having consented to the sale of Lot 538, was subject to an implied obligation to withdraw the caveat.

Held:

[1] When the respondent freely and voluntarily consented to a sale for the purposes which had been revealed by the appellant and subject only to the conditions specified in the consent order, the respondent became subject to an implied obligation to do nothing to prevent the terms of

the order being carried into effect. He became under a duty to withdraw the caveat whose continued existence prevented the order being carried into effect. In breach of that duty he declined to withdraw the caveat voluntarily. The caveat ought to be withdrawn and cancelled.

[Appeal allowed. Order of High Court restored.]

For the appellant - P.S. Gill (Frank McWilliams Kingsford with him); M/s. Dorman
For the respondent - Stephen Hunt; M/s. Bulcraig & Davis

JUDGMENT

Lord Templeman:

This was an appeal from the decision of the Federal Court reported in [1981] 2 MLJ 127.

The appellant and the respondent in this case were step-brothers. Their father was the Karta or manager of a joint family estate which included land at Port Dickson registered in the name of the Karta and held under Hindu law in trust for the Karta, the appellant and the respondent in equal shares. On 2 April 1951 the respondent brought a civil suit asserting that all property held by the Karta belonged to the joint family estate and claiming an account of the amount due to the respondent from the joint family estate or from the Karta. In aid of his civil suit the respondent lodged a caveat against lands registered in the name of the Karta. By a subsequent consent order made in the proceedings the caveat was ordered to be withdrawn with the exception of the caveat in respect of Lot 538 in the town of Port Dickson, which was ordered to remain registered "until further order of the Court" against the said lot.

In 1964 a receiver of the joint family estate was appointed. In 1974 the Privy Council on appeal in the civil suit proceedings reported their opinion that the accounts of the joint Hindu family estate should be supplied from 15 July 1950. (See [1974] 2 MLJ 133). The Karta died in 1972. In 1973 the appellant initiated a probate suit in the High Court. In 1977 the Federal Court on appeal ordered that the probate of the will of the Karta be granted to the appellant "subject to the proviso that before disposing of or distributing any property bequeathed under the will or the proceeds of such property, there shall be an order to that effect." (See [1978] 1 MLJ 120).

The respondent alleged maladministration and breaches of trust by the Karta and the appellant in connection with the joint family estate.

In 1978 the appellant applied by originating summons for leave to sell Lot 538. In his affidavit the appellant explained that when the joint family estate was put into the hands of the receiver, the Karta in his lifetime and the appellant after his death were forced to borrow money at high rates of interest. The appellant wished to discharge these borrowings out of the two-thirds share of the proceeds of Lot 538 attributable to the Karta and the appellant and to invest any balance in high yielding securities. In 1979 an order was made with consent of the appellant and the respondent for leave to sell Lot 538 for a minimum price of RM1,239,213.50. It was ordered that the net proceeds of sale after payment of taxes should be divided as to two-thirds to the appellant and one-third to the respondent. For the purpose of effecting registration of the transfer to the purchaser, the receiver was directed to release the documents of title to the appellant.

The respondent was asked to withdraw the caveat but he declined to do so unless the Karta's share of the net proceeds of sale was placed on deposit as security for the claims of the respondents against the Karta's estate. The appellant applied by summons for an order that the caveat be removed and cancelled. Ajaib Singh J ordered the caveat to be removed and cancelled but the Federal Court allowed the appeal against the order.

The appellant with the leave of the Federal Court appealed to the Yang di-Pertuan Agong.

The Judicial Committee of the Privy Council advised that the appeal should be allowed and the order made by the High Court restored. Lord Templeman in giving the advice of the Privy Council said:

> When the Court in the probate action directed that the Karta's property should not be disposed of or distributed the order was made in order to protect the respondent's claims in respect of the joint family estate. The protection afforded by the order included the power of the respondent to prevent a sale of lot 538 unless the Court authorised a sale.
>
> When the appellant sought leave to sell lot 538 he made it quite clear that he intended, if leave were granted, to dispose of two-thirds of the net proceeds of sale by settling the debts of the Karta's estate and the debts of the appellant and by investing any balance. He offered to allow, and the consent order did allow, one-third of the net proceeds of sale to be handed over to the respondent.
>
> When therefore the appellant sought leave to sell lot 538, the respondent was faced with a choice. He could consent to a sale unconditionally or on condition that part of the net proceeds of sale be placed on deposit or otherwise secured to protect the claim of the respondent in respect of the joint family estate. Alternatively he could oppose a sale. In the event the respondent chose to consent unconditionally to a sale. His consent was given by Counsel on his behalf and was embodied in a consent order which contractually bound the respondent and prevented him from seeking to impose conditions on the sale other than the conditions as to price and otherwise which are embodied in the consent order.
>
> On behalf of the respondent it was submitted that the respondent's consent to a sale contained in the consent order dated 5 February 1979 did not affect the protection afforded to the respondent by the caveat. But after consenting to a sale the respondent could no longer prevent a sale. He became under a duty to withdraw the caveat in order to enable the sale to take place and on his refusal to withdraw the caveat the Court has power to order withdrawal and cancellation.
>
> It was submitted that the order for withdrawal of the caveat made by Ajaib Singh J was not effective because the order was not expressed to be made in the civil suit proceedings. But Ajaib Singh J clearly had jurisdiction under the Land Code legislation to order the withdrawal of the caveat in any proceedings to which the respondent as caveator was a party. Ajaib Singh J rightly exercised that power because, as he said in his judgment, the respondent's "refusal to vacate the caveat was not justifiable. He was now placing obstacles to thwart the order to which he had consented on 5 February 1979".
>
> The Federal Court was influenced by the assertion that the respondent overlooked his caveat when he gave consent to the sale. But whether in proceedings relating to the caveat or in proceedings relating to the limitations imposed by the order made in the probate proceedings, the choice of the respondent, which was to oppose or to allow the sale, was affected by the same considerations. He could either fight to prevent a sale in order to protect his remedies and maintain the pressure of his civil suit or he could consent to a sale and accept the proffered share of the net proceeds of sale. The Federal Court said that because "'the parties' minds were not directed to the caveat...the consent given in the circumstances must be treated as being subject to the legal limitations and encumbrances under the title, more so when in applying for the order of sale no mention was made of any limitation and encumbrance". But the only relevant encumbrance was the caveat and the consent could not have been made subject to the caveat which if it continued to exist wholly nullified the effect of the order. The continued existence of the caveat prevents the sale to the purchaser authorised by the consent order or at any rate prevents any sale at the minimum price stipulated by the consent order and exceeding RM1,000,000.

Their Lordships consider that when the respondent freely and voluntarily consented to a sale for the purposes which had been revealed by the appellant and subject only to the conditions specified in the consent order, the respondent became subject to an implied obligation to do nothing to prevent the terms of the order being carried into effect. He became under a duty to withdraw the caveat whose continued existence prevents the order being carried into effect. In breach of that duty he declines to withdraw the caveat voluntarily. In their Lordships' opinion, in exercise of the powers conferred on the Court under the Land Code, the caveat ought to be withdrawn and cancelled.

Also found at [1983] 1 CLJ 66